

ESTTA Tracking number: **ESTTA727753**

Filing date: **02/17/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Sazerac Brands, LLC
Granted to Date of previous extension	02/17/2016
Address	10400 Linn Station Road, Suite 300 Louisville, KY 20004 UNITED STATES
Party who filed Extension of time to oppose	Sazerac Company, Inc.
Relationship to party who filed Extension of time to oppose	Sazerac Company, Inc. assigned all of its trademarks to Sazerac Brands, LLC. Sazerac Brands, LLC is a wholly-owned subsidiary of Sazerac Company, Inc. Accordingly, there is privity between the filer and the opposer.

Attorney information	Thomas M. Hadid Cooley LLP 1299 Pennsylvania Ave., NWSuite 700 Washington, DC 20004 UNITED STATES trademarks@cooley.com, thadid@cooley.com, pwillsey@cooley.com, vbadolato@cooley.com Phone:3108836400
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Applicant Information

Application No	85949314	Publication date	10/20/2015
Opposition Filing Date	02/17/2016	Opposition Period Ends	02/17/2016
Applicant	The Coca-Cola Company One Coca-Cola Plaza Atlanta, GA 30313 UNITED STATES		


Goods/Services Affected by Opposition

Class 032. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: non-alcoholic beverages, namely, carbonated beverages and energy drinks

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4564436	Application Date	10/26/2010
Registration Date	07/08/2014	Foreign Priority Date	NONE
Word Mark	FUEL YOUR FIRE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2014/03/24 First Use In Commerce: 2014/03/24 Distilled spirits and liqueurs; prepared alcoholic cocktails		

Attachments	85161357#TMSN.png(bytes) Sazerac - Notice of Opposition re BURN FUEL YOUR FIRE.pdf(23003 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Thomas M. Hadid/
Name	Thomas M. Hadid
Date	02/17/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 85/949,314
For the Trademark BURN FUEL YOUR FIRE and Design
Published in the *Official Gazette* on October 20, 2015

SAZERAC BRANDS, LLC,)	
)	
Opposer,)	
)	Opposition No.
v.)	
)	
THE COCA-COLA COMPANY,)	
)	
Applicant.)	
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NOTICE OF OPPOSITION

Opposer Sazerac Brands, LLC (“Sazerac”), a Delaware limited liability company having its principal place of business at 10400 Linn Station Road, Suite 300, Louisville, Kentucky 40223, will be damaged by the issuance of a registration for the mark BURN FUEL YOUR FIRE and Design (the “Applicant’s Mark”), as applied for in Application Serial No. 85/949,314 filed on June 3, 2013, by Applicant The Coca-Cola Company,¹ a Delaware corporation with a principal address at One Coca-Cola Plaza, Atlanta, Georgia 30313 (“Applicant”).

As grounds for opposition, Sazerac alleges as follows.

1. Sazerac, through its parent company Sazerac Company, Inc. (“Sazerac Company”), markets and sells a number of different types and brands of alcoholic beverages and distilled spirits, including vodkas, whiskeys, tequilas, liqueurs, and other spirits. Sazerac

¹ Counsel for The Coca-Cola Company has informed counsel for Sazerac that Application Serial No. 85/949,314 has been assigned to Monster Energy Company, a Delaware corporation with a principal address at 1 Monster Way, Corona, California 92879. This Assignment does not appear to have been recorded with the United States Patent and Trademark Office.

Company has marketed and sold alcoholic beverages and distilled spirits in the United States for over a century.

2. Sazerac owns United States Registration No. 4,564,436 for FUEL YOUR FIRE, filed October 26, 2010, and issued July 8, 2014, for “distilled spirits and liqueurs; prepared alcoholic cocktails” (Sazerac’s “FUEL YOUR FIRE Mark”).

3. Sazerac Company has consistently and continually marketed and sold distilled spirits under Sazerac’s FUEL YOUR FIRE Mark and tagline since 2014 in connection with its well-known FIREBALL and FIRE WATER alcoholic beverage products. By virtue of its marketing and the excellence of the underlying products, the public has come to know, rely on, and recognize Sazerac’s FUEL YOUR FIRE Mark as a source identifier for Sazerac Company’s products.

4. In conjunction with the use of Sazerac’s FUEL YOUR FIRE Mark, Sazerac Company’s products have grown substantially in popularity across the United States.

5. On June 3, 2013, Applicant filed an application to register the mark BURN FUEL YOUR FIRE and Design upon an intent-to-use basis in connection with “non-alcoholic beverages, namely, carbonated beverages and energy drinks” in International Class 32.

6. Sazerac’s FUEL YOUR FIRE Mark has priority through a filing date prior to Applicant’s filing date of June 3, 2013.

7. Sazerac’s FUEL YOUR FIRE Mark is strong and well-known.

8. Applicant’s Mark is virtually identical in sight, sound, meaning, and commercial impression to Sazerac’s FUEL YOUR FIRE Mark.

9. Applicant's Mark is intended for use in connection with products that are closely related to – and often used as beverage mixers with – the products Sazerac Company offers under Sazerac's FUEL YOUR FIRE Mark.

10. Applicant's targeted customer base likely overlaps with the consumers of Sazerac Company's alcoholic beverages.

11. As Applicant's goods description contains no restrictions or limitations as to the Applicant's channels of trade, Sazerac may assume that Applicant's Mark, like Sazerac's FUEL YOUR FIRE Mark, will be used in all accepted channels of trade. Therefore, in addition to overlapping consumer bases, Applicant's intended channels of trade for its alcohol-based products likely overlap with channels of trade used in marketing, selling, and otherwise distributing alcohol-based products marketed under Sazerac's FUEL YOUR FIRE Mark.

12. If Applicant is permitted to register Applicant's Mark for the goods specified in the Application herein opposed, confusion resulting in damage and injury to Sazerac would occur. Persons familiar with Sazerac's FUEL YOUR FIRE Mark would likely perceive Applicant's products as associated with, affiliated with, or sponsored by Sazerac. Such confusion would inevitably result in damage to Sazerac.

13. Sazerac's customers and the relevant public are likely to misapprehend Applicant's Mark as Sazerac's Marks rather than marks of Applicant and/or believe in error that goods offered under the Applicant's Mark are offered by, in association with, or under license from Sazerac.

14. Any defect, objection to, or fault found with Applicant's alcoholic beverages marketed under its BURN FUEL YOUR FIRE mark would necessarily reflect on and seriously

injure the reputation that Sazerac has established for the alcoholic beverage products offered under Sazerac's FUEL YOUR FIRE Mark.

15. Registration of Applicant's Mark would give Applicant *prima facie* evidence of the validity and ownership of Applicant's Mark and of Applicant's exclusive right to use its BURN FUEL YOUR FIRE mark, all to the detriment of Sazerac.

16. Wherefore, Sazerac prays that this Opposition be sustained and that Application Serial No. 85/949,314 be denied and refused registration.

COOLEY LLP

Date: February 17, 2016

By: /s/ Thomas M. Hadid
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*Attorneys for Sazerac,
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CERTIFICATE OF SERVICE

I hereby certify that I mailed the foregoing **NOTICE OF OPPOSITION** regarding *Sazerac Brands, LLC. v. The Coca-Cola Company* to the listed Attorney of Record for Applicant by depositing a true and correct copy of the same with the United States Postal Service, first class mail, postage prepaid, in an envelope addressed to:

Ms. Andrea E. Bates
Bates & Bates, LLC
1890 Marietta Boulevard, NW
Atlanta, Georgia 30318-2803

with a copy to:

Ms. Diane M. Reed
Knobbe, Martens, Olson & Bear, LLP
2040 Main Street, Floor 14
Irvine, California 92614-8214

Date: February 17, 2016

By: /s/ Thomas M. Hadid
Thomas M. Hadid